

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)
Plaintiff,) 8:05CR195
vs.)
DONALD E. PEACOCK,) REPORT AND
Defendant.) RECOMMENDATION

On April 28, 2005, defendant Donald E. Peacock (Peacock), together with his counsel, Michael T. Levy, appeared before the undersigned magistrate judge, waived indictment, and consented to the filing of the Information herein. Peacock was advised of the charge, the penalties, and the right to appear before a United States District Judge. After orally consenting to proceed before a magistrate judge, Peacock entered a plea of guilty to Count I of the Information.

After being sworn, Peacock was orally examined by the undersigned magistrate judge in open court as required by Federal Rule of Criminal Procedure 11. Peacock also was given the advice required by that Rule. Finally, Peacock was given a full opportunity to address the court and ask questions.

Counsel for the government and counsel for Peacock were given the opportunity to suggest additional questions by the court. Moreover, both counsel orally certified that they were of the opinion that the plea was knowing, intelligent and voluntary, and that there was a factual basis for Peacock's plea of guilty to Count I of the Information.

Therefore, I find and conclude that: (1) the plea is knowing, intelligent, and voluntary; (2) there is a factual basis for the plea; (3) the provisions of Rule 11 and any other provisions of the law governing the submission of guilty pleas have been complied with; (4) a petition to enter a plea of guilty, on a form approved by the court, was completed by Peacock, Peacock's counsel and counsel for the government, and such petition was placed in the court file; (5) the plea agreement is in writing and is filed in the court file; (6) there are no agreements or stipulations other than those contained in the written plea agreement.

IT IS RECOMMENDED TO CHIEF JUDGE JOSEPH F. BATAILLON that:

1. He accept the guilty plea and find the defendant, Donald E. Peacock, guilty of the crime set forth in Count I of the Information to which Peacock tendered a guilty plea;
2. Since the plea agreement contains a provision under Fed. R. Crim. P. 11(c)(1)(C), he not accept the written plea agreement at this time but reserve acceptance until the time of sentencing.

ADMONITION

Pursuant to NECrimR 57.3 any objection to this Report and Recommendation shall be filed with the Clerk of the Court within ten (10) days after being served with a copy of this Report and Recommendation. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to submit a brief in support of any objection may be deemed an abandonment of the objection.

DATED this 28th day of April, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge